

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE SHALLAS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Idaho, Northern Division.

FILED

SEP 25 1920

PAUL W. CURRIEN,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States in and
for the District of Idaho, Northern Division.

No. 2923.

Charge: Violation Section 125 Federal Penal Code.

UNITED STATES OF AMERICA,

vs.

GEORGE SHAWLE, *Alias* GEORGE SHALLAS,
Whose True Name is GEORGE SHALLAS,
Defendant.

INDICTMENT.

The Grand Jurors of the United States of America, being first duly empaneled and sworn, within and for the District of Idaho, Northern Division, in the name and by the authority of the United States of America, upon their oath do find and present:

That heretofore, to wit, on or about the 28th day of November, A. D. 1928, in the District Court for the District of Idaho, Northern Division, before Honorable Charles C. Cavanah, Judge of the aforesaid court, there was then and there pending and on trial, in the city of Coeur d'Alene, county of Kootenai, State and District of Idaho, Northern Division, and within the jurisdiction of this court, a certain criminal proceeding wherein the United States of America was plaintiff and Theodore Seivers, defendant, being case No. 2828, and wherein Theodore Seivers was duly and legally charged in two counts with certain violations of

the National Prohibition Act, in the words of said information as follows, to wit:

COUNT ONE.

(Possession.)

That Theodore Seivers, late of the County of Benewah, State of Idaho, heretofore, to wit, on or about the 14th day of October, 1928, at Tensed, Idaho, in the said county of Benewah, in the Northern Division of the District of Idaho, and within the jurisdiction of this court, did then and there, wilfully, knowingly and unlawfully have in his possession certain intoxicating liquor containing more than one-half of one per cent of alcohol, to wit, one pint of certain spirituous liquor commonly known as "moonshine whiskey," the same being designed, intended and fit for use as a beverage, the possession of same being then and there prohibited and unlawful, and contrary to the form of the statute in such case made [1*] and provided and against the peace and dignity of the United States of America.

COUNT TWO.

(Sale.)

That Theodore Seivers, late of the county of Benewah, State of Idaho, heretofore, to wit, on or about the 14th day of October, 1928, at Tensed, Idaho, in the said county of Benewah, in the Northern Division of the District of

*Page-number appearing at the foot of page of original certified Transcript of Record.

Idaho, and within the jurisdiction of this court, did, then and there, wilfully, knowingly and unlawfully sell a quantity of certain intoxicating liquor containing more than one-half of one per cent of alcohol, to wit, one pint of certain spirituous liquor commonly known as "moonshine whiskey," the same being designed, intended and fit for use as a beverage, the sale of same being then and there prohibited and unlawful, and contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

and of which said judicial proceeding, the said court then and there had jurisdiction to try said issues according to the laws of the United States of America, and which said court then and there being and having been fully competent to administer the law in said trial; that it then and there became and was material to know in said proceeding whether or not Theodore Seivers, the defendant, was in Tensed, Idaho, on the afternoon and evening of October 14, 1928, and one GEORGE SHAWLE, *alias* GEORGE SHALLAS, was then and there duly called as a witness in said trial for and on behalf of the said defendant Theodore Seivers, whereupon W. D. McReynolds, the duly appointed, qualified and acting Clerk of said court and an officer authorized by law and competent to administer oaths, and to administer an oath to the said GEORGE SHAWLE, *alias* GEORGE SHALLAS as a witness in said cause, did, then and there,

on the said 28th day of November, 1928, in the city of Coeur d'Alene, county of Kootenai, State and District of Idaho, Northern Division, administer an oath in due form of law to the said GEORGE SHAWLE, *alias* GEORGE SHALLAS, and the said GEORGE SHAWLE, *alias* GEORGE SHALLAS, being so sworn to tell the truth, the whole truth and nothing but the truth, he, the said GEORGE SHAWLE, *alias* GEORGE SHALLAS, did, then and there, to wit, on the 28th day of November, 1928, in the trial entitled the United States of America vs. Theodore Seivers, defendant, as aforesaid, wilfully, knowingly and unlawfully, corruptly, falsely and feloniously swear, take oath, say and give evidence, among [2] other things, and give the answers as hereinafter set forth, in response to the questions hereinafter set forth, to wit:

Q. Where do you reside? A. Spokane.

Q. What is your business?

A. Hotel business.

Q. What hotel are you operating?

A. The Ethlyn Hotel.

Q. Were you operating the Ethlyn Hotel during the month of October, 1928? A. Yes.

Q. Were you at the hotel on the 13th, 14th and 15th days of October, 1928? A. I was.

Q. Did you see Mr. and Mrs. Sievers there at your hotel on the thirteenth? A. I did.

Q. Did you see them there on the 14th?

A. I did.

Q. And what part of the day do you recall seeing them on Sunday, the 14th?

A. About nine—between nine and ten o'clock they went out, and Mr. Seivers told me—

Q. That would be hearsay?

A. I seen them in the morning.

Q. And again in the afternoon? A. Yes.

Q. How many times do you recall—approximately how many times do you recall?

A. A couple of times in the afternoon.

Q. Did they stay at the hotel Sunday night?

A. They did.

Q. Do you remember their checking out there Monday? A. The fifteenth, yes. [3]

Q. Who, if anybody, did the checking out—who did they pay there? A. Personally to me.

Q. Mr. Sievers did? A. Yes.

Q. Calling your attention to October 14th, you say you saw the defendant Theodore Sievers at your hotel? A. Yes.

Q. About what time did you first see him there on that day?

A. I seen him in the morning once, around nine-thirty or ten.

Q. When did you next see him?

A. In the afternoon.

Q. What time?

A. A couple of times between three and five.

Q. You saw him twice between three and five?

A. Yes.

WHEREAS, in truth and in fact, as he, the said GEORGE SHAWLE, *alias* GEORGE SHALLAS,

then and there will knew, the said THEODORE SEIVERS was not at the Ethlyn Hotel in the city of Spokane, State of Washington during the afternoon and evening of October 14, 1928, during the time or times that the said GEORGE SHAWLE, *alias* GEORGE SHALLAS testified that the said Theodore Seivers was there, or at any other time on that day and that the said GEORGE SHAWLE, *alias* GEORGE SHALLAS, did not see the said Theodore Seivers during the afternoon of October 14, 1928, in the Ethlyn Hotel or any other place in the city of Spokane, State of Washington, whereby he, the said GEORGE SHAWLE, *alias* GEORGE SHALLAS did, then and there, as aforesaid, knowingly, wilfully, unlawfully, corruptly, falsely and feloniously swear and did feloniously commit perjury. [4]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

H. E. RAY,

United States Attorney for the District of Idaho.

CARL LUNDGREN,

Foreman of the United States Grand Jury.

Witnesses Examined Before the Grand Jury in

the Above Case:

Susan Lawrence.

W. H. Phillips.

Timothy Dominick.

Dene Hickman.

R. J. Hart.

Leo Hamilton.

Roy Shaw.

W. D. McReynolds.

W. H. McNeil.

Presented by the foreman in open court and

filed in the presence of the Grand Jury May 29, 1929.

W. D. McREYNOLDS,
Clerk. [5]

[Endorsed]: Indictment. Charge: Vio. Sec. 125,
Fed. Penal Code—Perjury. U. S. Rev. St., §——.

H. E. RAY,
U. S. Attorney.

A true bill.

CARL LUNDGREN,
Foreman.

Presented by the foreman in open court and
filed in the presence of the Grand Jury May 29,
1929.

W. D. McREYNOLDS,
Clerk. [6]

[Title of Court and Cause.]

MOTION FOR ORDER EXTENDING TIME
TO AUGUST 12, 1929, TO FILE BILL OF
EXCEPTIONS.

Comes now the defendant in the above-entitled
action and petitions the Court for an order ex-
tending the time within which to serve and file
bill of exceptions in the above-entitled matter until
August 12th, 1929.

This motion is based on records and files herein
and to affidavit of Alan G. Paine hereto attached.

ROBERTSON & PAINE,
Attorneys for Defendant. [7]

[Title of Court and Cause.]

AFFIDAVIT OF ALAN G. PAINE.

State of Washington,
County of Spokane,—ss.

Alan G. Paine being first duly sworn upon his oath deposes and says that he is the attorney for George Shallas and that on receipt of the memorandum opinion of the Honorable Judge C. C. Cavanaugh the above-entitled case holding that the petition for a new trial should be denied, that he prepared an order denying petition for a new trial and mailed the same to W. D. McReynolds, Clerk of the United States District Court at Boise, Idaho, with a letter requesting him to have the order signed and entered and advise him of the date of signing; and that on July 19th you received from said *Clerk District Court* a letter returning his order and stating that the order had already been signed and entered on July 11th.

This was the first notification he had of the date when the order denying the new trial was signed. He, at once, communicated with Mr. L. G. Hamilton and told him to commence getting out the bill of exceptions, and it was physically impossible to prepare and serve a bill of exceptions within the time allowed by the Rules of the Court after he received notice of the date of the order denying the motion for a new trial and that if the time is extended to August 12th, 1929, the bill of exceptions can be prepared and filed herein, and

the case docketed at the first term of the Circuit Court to be held after the judgment herein. [8]

ALAN G. PAINE.

Subscribed and sworn to before me this 26th day of July, 1929.

[Seal]

E. W. ROBERTSON,
Notary Public.

[Endorsed]: Filed July 27, 1929. [9]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING AUGUST 12, 1929, TO FILE BILL OF EXCEPTIONS.

The above-entitled matter having come up for hearing on defendant's application for an order extending the time in which to serve and file bill of exceptions in the above-entitled case the Court being advised in the premises

IT IS ORDERED that the defendant have to and including the 12th day of August, 1929, in which to serve, file and settle his bill of exceptions in the above-entitled case.

Done in Chambers in Boise, Idaho, this 27th day of July.

CHARLES C. CAVANAH,
United States District Judge.

[Endorsed]: Filed July 27, 1929. [10]

[Title of Court and Cause.]

PETITION FOR NEW TRIAL.

Comes now the defendant and petitions the Court to vacate and set aside the verdict of the jury herein and to grant the defendant a new trial upon the following grounds:

I.

Insufficiency of the evidence to justify the verdict of the jury.

II.

Error in law occurring at the trial and excepted to at the time by the defendant.

III.

That the evidence was insufficient in that it did not show that the defendant did not see the witness Theodore Seivers in Spokane, Washington, on October 14, 1928, and that there was no evidence corroborating the testimony of the witness Theodore Seivers that the defendant George Shallas did not see said witness in Spokane, Washington, during the afternoon of October 14, 1928, or at any time on that date.

That the errors of law occurring at the trial were as follows:

That the Court erred in refusing to grant defendant's motion for a directed verdict made at the close of the Government's case.

That the Court erred in refusing to grant the

defendant's motion for a directed verdict made at the close of all testimony.

That the Court erred in refusing to give defendant's requested instruction No. 2. [11]

That the Court erred in instructing the jury that if they found that the statements of the defendant made at the trial of Theodore Seivers, in November, 1928, that he saw said Theodore Seivers at the Ethlyn Hotel in Spokane, Washington, between 3:00 and 5:00 o'clock on October 14, 1928, were false and knowingly and wilfully made, they can find defendant guilty.

The Court erred in instructing the jury that the indictment charged that the defendant George Shallas wilfully, unlawfully, corruptly, falsely and feloniously swore that Theodore Seivers stayed at the Ethlyn Hotel Sunday night, October 14, 1928.

ROBERTSON & PAINE,
Attorneys for Defendant.

[Endorsed]: Filed June 5, 1929. [12]

[Title of Court and Cause.]

AMENDED PETITION FOR NEW TRIAL.

Comes now the defendant and petitions the Court to vacate and set aside the verdict of the jury herein and to grant the defendant a new trial upon the following grounds:

I.

Insufficiency of the evidence to justify the verdict of the jury.

II.

Error in law occurring at the trial and excepted to at the time by the defendant.

III.

That there is newly discovered evidence material for the defendant which could not with reasonable diligence have been discovered and produced at the trial.

IV.

That the evidence was insufficient in that it did not show that the defendant did not see the witness Theodore Sievers in Spokane, Washington, on October 14, 1928, and that there was no evidence corroborating the testimony of the witness Theodore Sievers that the defendant George Shallas did not see said witness in Spokane, Washington, during the afternoon of October 14, 1928, or at any time on that date.

That the errors of law occurring at the trial were as follows: [13]

That the Court erred in refusing to grant defendant's motion for a directed verdict made at the close of the Government's case.

That the Court erred in refusing to grant the defendant's motion for a directed verdict made at the close of all testimony.

That the Court erred in refusing to give defendant's requested instruction No. 2.

That the Court erred in instructing the jury that if they found that the statements of the defendant made at the trial of Theodore Sievers, in

November, 1928, that he saw said Theodore Sievers at the Ethlyn Hotel in Spokane, Washington, between 3:00 and 5:00 o'clock on October 14, 1928, were false and knowingly and wilfully made, they can find defendant guilty.

The Court erred in instructing the jury that the indictment charged that the defendant George Shallas wilfully, unlawfully, corruptly, falsely and feloniously swore that Theodore Sievers stayed at the Ethlyn Hotel Sunday night, October 14, 1928.

V.

Newly discovered evidence as contained in the affidavits of Laura Sievers and Alan G. Paine attached hereto and made a part hereof.

ROBERTSON & PAINE,
Attorneys for Defendant. [14]

[Title of Court and Cause.]

AFFIDAVIT OF LAURA SIEVERS.

State of Washington,
County of Spokane,—ss.

Laura Sievers, being first duly sworn, upon her oath deposes and says: that she is the wife of Theodore Sievers who testified for the Government in the above-entitled case in the United States District Court for the District of Idaho, at Coeur d'Alene, Idaho, on June 4, 1929; that she had been in Coeur d'Alene, Idaho, on the 27th day of May, 1929, and at that time she was informed by the District At-

torney's office that she was not needed in Coeur d'Alene, and that she should go back to her home in Tensed and stay there; that on June 4th, 1929, she was called on the long distance telephone by Mr. W. R. Langroise, Assistant United States District Attorney, and told that she was wanted at Coeur d'Alene to testify in the case of United States vs. George Shallas, and that she was to come at once to Coeur d'Alene; that she secured a car driven by Dave Cohn of Tekoa, Washington, and that said Dave Cohn drove her to Coeur d'Alene, and that she was there met by Mr. Dave Hickman, Special Agent of the Department of Justice, and taken into the office of the United States Marshal; that there she was questioned by Mr. Hart and Mr. Hickman, and asked by them to testify in the case of the United States vs. George Shallas, to the effect that on the 14th day of October, 1928, she and her husband, Ted Sievers, [15] after leaving the Ethlyn Hotel, Spokane, Washington, about 9:00 or 9:30 in the morning, never returned to the Ethlyn Hotel on that date; that she informed said Hickman and said Hart that that was not true, that she and her husband, Ted Sievers, did return to the Ethlyn Hotel, Spokane, Washington, after lunch, and some time between 2:00 and 3:00 P. M., that her husband, Ted Sievers, got out of their car and went into the Ethlyn Hotel to get a pair of her shoes and some toilet articles which she had left there; she told said officers that she was positive that this had occurred, and that she would so testify if called upon the witness-stand; that thereupon the said Hickman turned her over to the cus-

tody of the United States Marshal, Mr. Brashers, and that she was detained in the United States Marshal's office and not permitted to leave the same; that when she attempted to leave said office during the recess of said court, Mr. Hickman took her by the arm and told her that she had to stay in the Marshal's office; that about 3:30 or 4:00 o'clock, the said Hickman came and took her down to the street where the automobile and the driver who had brought her from Tekoa was parked; that he put her in said automobile and told the driver to take her back home just as fast as he had brought her to Coeur d'Alene, and that she was driven back to Tensed, Idaho; that at no time during the day of June 4th, 1929, did she see or speak to George Shallas, or Alan G. Paine, his attorney; that if a new trial is granted George Shallas, affiant will testify that she was in Spokane on October 14th, 1928, with her husband, Theodore Sievers, and that they did return to the Ethlyn Hotel in the city of Spokane, Washington, on said date, and that said Theodore Sievers went into the said Ethlyn Hotel some time between 2:00 [16] and 3:00 o'clock on said date; and that said facts are true.

LAURA SIEVERS.

Sworn to and subscribed before me this 21st day of June, 1929.

[Seal]

E. J. BARKER,

Notary Public for the State of Washington, Residing at Spokane. [17]

State of Washington,
County of Spokane,—ss.

Alan G. Paine, being first duly sworn, upon his oath deposes and says: that he is the attorney for George Shallas and was such attorney at the time of the trial of the above-entitled case; that he had no knowledge or information that said Laura Sievers was in Coeur d'Alene at the date of the said trial; that if he had known that she was present at Coeur d'Alene he would have called her to testify in behalf of the said defendant that she and her husband, Theodore Sievers, returned to the Ethlyn Hotel some time during the afternoon of October 14, 1928; that said Laura Sievers had informed him that she and her husband returned to the Ethlyn Hotel after lunch on October 14th, and that he believed said Theodore Sievers would admit that they had done so; that he did not subpoena said Laura Sievers to be present at the trial of the above-entitled action for the reason that she had informed him several days before that there were pending against her charges of perjury and that she understood that the charges would be dropped if she returned to Tensed and remained there, and that he did not feel justified in compelling her to attend as a witness under the circumstances; that her testimony is vitally material to the defendant and that if a new trial is granted the testimony given will undoubtedly result in a different verdict.

ALAN C. PAINE.

Sworn to and subscribed before me this 26th day of June, 1929.

EDWARD W. ROBERTSON,
Notary Public for the State of Washington, Re-
siding at Spokane.

[Endorsed]: Filed June 28, 1929. [18]

[Title of Court and Cause.]

ORDER DENYING PETITION FOR NEW
TRIAL.

Upon consideration, and in harmony with memo-
randum opinion this day filed in the above-entitled
cause,

IT IS ORDERED, that the petition for new trial
be and the same is hereby denied. To which de-
fendant excepts, and exception is allowed.

Dated: Boise, Idaho, July 11th, 1929.

CHARLES C. CAVANAH,
District Judge.

[Endorsed]: Filed July 1, 1929. [19]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled case, find the defendant George Shallas guilty as charged in the indictment.

FULTON COOK,
Foreman.

[Endorsed]: Filed June 4, 1929. [20]

CRIMINAL—No. 2923.

June 5, 1929.

UNITED STATES OF AMERICA,

vs.

GEORGE SHALLAS,

Defendant.

JUDGMENT AND SENTENCE.

Comes now the District Attorney with the defendant George Shallas and his counsel into court, this being the time fixed for judgment herein.

The defendant was asked by the Court if he had any legal cause to show why judgment should not be pronounced, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court,

NOW, THEREFORE, IT IS ADJUDGED upon the verdict of the jury that the defendant George Shallas is guilty as charged in the indictment, and

It is further adjudged that said defendant pay a fine of \$1,000.00 and be confined in the United States Penitentiary at McNeil Island, Washington, for a term of eighteen months; in default of payment of fine the defendant to be confined in the prison aforesaid until said fine is paid or until the defendant is released by due process of law; confinement on account of fine to run consecutive to the term of imprisonment imposed.

The defendant was remanded to the custody of the United States Marshal to be by him delivered into the custody of the proper officer of said prison.

The defendant's petition for a new trial was argued before the Court by counsel for the respective parties and the defendants were each granted fifteen days for the filing of briefs in final submission of the motion. [21]

[Title of Court and Cause.]

OBJECTIONS OF PLAINTIFF TO THE
SETTLING AND ALLOWING OF
DEFENDANT'S PROPOSED BILL OF
EXCEPTIONS.

Comes now the United States of America, and makes the following objections and proposes the following amendments to the proposed bill of exceptions on behalf of the defendant.

1. The United States of America objects to the settling and allowing of the proposed bill of exceptions of the defendant for the reason and upon the

ground that the court has no jurisdiction to allow said bill of exceptions; that the said proposed bill of exceptions was not filed and lodged with the Clerk within the time prescribed or allowed by Rule 76 of the Rules of Practice of the United States District Court for the District of Idaho, in the following respects:

(a) That the said case was tried on June 4, 1929, at Coeur d'Alene, Idaho, during the May term of that court, and there was not at any time during the trial of said cause, or within ten days after the rendition of the verdict of said case, any order secured from the Court allowing the preparing and filing of any exceptions in the case.

(b) That the first order or purported order secured from the Court with respect to preparing and filing of bill of exceptions in this matter was secured on the 27th day of July, 1929, [22] said purported order being dated and made at Boise, Idaho, long after the May term of court at Coeur d'Alene adjourned without day.

This objection is based upon all the records and files in the above-entitled case and upon the minute-book of the Clerk of the United States District Court for the District of Idaho, showing the adjournment of said May term of court.

The above objection is denied and exception allowed.

CHARLES C. CAVANAH,
Judge.

* * * * *

(Testimony of W. D. McReynolds.)

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above and foregoing cause came regularly on for hearing in the above-entitled court before the Honorable Charles C. Cavanah, Judge thereof, with the jury at Coeur d'Alene, Idaho, on Tuesday, June 4th, 1929, at 9:30 A. M.; William H. Langroise, Assistant United States District Attorney, appearing for the plaintiff, and Alan G. Paine, appearing for the defendant.

The jury was then impaneled and sworn, after which the following proceedings were had:

TESTIMONY OF W. D. McREYNOLDS, FOR
PLAINTIFF.

W. D. McREYNOLDS was called and sworn as a witness in behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I am now, and was on November 28th, 1928, the duly qualified and acting clerk of this court. There was pending, and on trial on November 28th, 1928, at Coeur d'Alene, Idaho, an action entitled United States vs. Theodore Sievers. (Information in the case of U. S. vs. Theodore Sievers, No. 2828 marked Plaintiff's Exhibit No. 1, admitted in evidence.)

(Testimony of W. D. McReynolds.)

The defendant, George Shallas, was called as a witness for the defendant in the trial of the case of U. S. vs. Sievers on November 28th, 1928, in the Northern Division of the District of [24] Idaho, at Coeur d'Alene, Idaho, before his Honor, Judge Cavanah, I administered the oath in the form prescribed by law to him, and he swore to it.

TESTIMONY OF LEO G. HAMILTON, FOR PLAINTIFF.

LEO G. HAMILTON was called and sworn as a witness on behalf of the plaintiff, and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I am now, and was on November 28th, 1928, Court Reporter for the United States District Court for the District of Idaho. I took down in shorthand, the testimony of George Shallas in Case No. 2828, entitled United States vs. Theodore Sievers, on November 28th, 1928. I, thereafter, transcribed my notes. The witness, George Shallas, at Coeur d'Alene, Idaho, in the Northern Division of the District of Idaho, in the case of the United States of America vs. Theodore Sievers, on November 28th, 1928, did testify and make the following answers to the following questions, upon direct examination by Mr. Wernette: "Q. Where do you reside? A. Spokane. Q. What is your business? A. Hotel

(Testimony of Leo G. Hamilton.)

business. Q. What hotel are you operating? A. Ethlyn Hotel. Q. Were you operating the Ethlyn Hotel during the month of October, 1928? A. Yes. Q. Were you at the hotel on the 13th, 14th and 15th days of October, 1928? A. I was. Q. Did you see Mr. and Mrs. Sievers there at your hotel on the 13th? A. I did.” “Q. Did you see them there on the 14th? A. I did. Q. And what part of the day do you recall seeing them on Sunday, the 14th? A. About nine—between nine and ten o’clock they went out, and Mr. Sievers told me—Q. That would be hearsay. A. I seen them in the morning. Q. Again in the afternoon? A. Yes. Q. How many times do you recall—approximately how many times do you recall? A. A couple of times in the afternoon. Q. Did they stay at the hotel Sunday night? A. They did. Q. Do you remember their checking out there Monday? The 15th, yes. [25] Q. Who, if anybody, did the checking out—who did they pay there? A. Certainly to me. Q. Mr. Sievers did? A. Yes.”; and on cross-examination by Mr. Langroise, testified as follows: “Calling your attention to October 14th, you say you saw the defendant, Theodore Sievers at your hotel? A. Yes. Q. About what time did you first see him there on that day? A. I seen him in the morning once, around nine thirty or ten. Q. When did you next see him? A. In the afternoon. Q. What time? A. A couple of times between three and five. Q. You saw him twice between three and five? A. Yes.”

TESTIMONY OF THEODORE SIEVERS, FOR
PLAINTIFF.

THEODORE SIEVERS was called and sworn as a witness on behalf of the plaintiff, and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I am the Theodore Sievers, who was charged in two counts with a violation of the National Prohibition Law, Case Number 2828, tried in Coeur d'Alene, November 28th, 1928. I entered a plea of guilty to those two charges here at this term. I am the same Theodore Sievers indicted by the Grand Jury in Case No. 2917 for perjury in connection with my testimony at that time. I have entered a plea of guilty to that charge. I know the defendant, George Shallas. I met him about a year ago. I was arrested in the latter part of October, 1928, in connection with the possession and sale of intoxicating liquor. About a week after the preliminary hearing at Plummer, I had occasion to see and talk to the defendant at Spokane. I went up to the Ethlyn Hotel, where he was, and explained the case to him. I said I was arrested for the sale of liquor and that I had been up to Wernette's and he told me to go and see if I could get another witness to testify that I wasn't home on Sunday, October 14th, 1928. I told George Shallas just how I sold the whiskey that night and

(Testimony of Theodore Sievers.)

that I didn't think nobody seen me, [26] so then he says, "Are you sure nobody saw you?" and I said, "I'm pretty sure of that." He said, "Well, what do you want to do?" I says, "I want to show the Court that I wasn't home on that certain day." Of course, I had been in Spokane, the Saturday night before, Oct. 13th, so he said, "We will fix up the register to show that you were here on the 13th and 14th, and didn't check out until the 15th." He went into a room and got a pencil and erased the "14" somebody else had registered for room 36, the room my wife and I had on Oct. 13, on the 14th so he just erased the "4" and made a "5," so that proved we were there on the 14th. Plaintiff's Exhibit No. 3 is the registry sheet I refer to, my wife is registered on it. It is the registry sheet he changed at the time I seen him in Spokane. It is in substantially the same condition as it was at that time with the exception of the change that has been made in it; and it is the same one that was offered in the case of *United States vs. Theodore Sievers*, November 28th, 1928, as Defendant's Exhibit No. 2.

TESTIMONY OF W. D. McREYNOLDS, FOR
PLAINTIFF (RECALLED).

At this point, W. D. McREYNOLDS was recalled and testified, Plaintiff's Exhibit No. 3 is the exhibit offered as Defendant's Exhibit No. 2 in the case of the *United States vs. Theodore Sievers*. The Defendant, George Shallas, was a witness in

(Testimony of W. D. McReynolds.)

that case and identified it as the original record of his hotel. I had it in my custody until a day or two ago and gave it then to the District Attorney. It was kept in the files of the court. I could not testify whether it is in the same condition now as then. I cannot be positive but I do not think any reference was made in the trial in November that Room 36 was registered for by another person on the 15th.

TESTIMONY OF WILLIAM LANGROISE,
FOR PLAINTIFF.

WILLIAM LANGROISE was called and sworn as a witness in behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. GRIFFIN.) [27]

I am Assistant United States District Attorney for the District of Idaho, and was at the November, 1928, Term. I got Plaintiff's Exhibit No. 3 from Mr. McReynolds and it has been in my possession at all times since, and it is in the same condition as when I got it from Mr. McReynolds.

Mr. LANGROISE.—We renew the offer.

The COURT.—It may be admitted.

Mr. PAINE.—I object on the ground that it is incompetent, irrelevant and immaterial to any of the issues in this case, or to prove that the defendant here is guilty of perjury in regard to the presence

(Testimony of Theodore Sievers.)

of Mr. Sievers in Spokane, Washington, on the 14th.

The COURT.—Overruled. Under the testimony I think a proper foundation has been laid now.

Mr. PAINE.—Exception.

TESTIMONY OF THEODORE SIEVERS, FOR PLAINTIFF (RECALLED).

THEODORE SIEVERS having resumed the stand continued,—The registration shown on Plaintiff's Exhibit No. 3 made by Mrs. Sievers for Room 36, is the room we occupied on October 13th. The entry which was changed is A. A. J. Logie, Seattle, Room 36, 10:15. The "4" was erased and a "5" made over it. After the erasure, George Shallas put a little dirt on it so it wouldn't be noticed. George Shallas also gave me a little piece of paper showing where I had given him Three and One Half Dollars (3.50) for the room rent for the 13th and 14th.

Mr. PAINE.—We object. The receipt would be the best evidence.

The COURT.—Sustained.

I gave the receipt to Mr. Wernette, I have not seen it since. My wife and I did not stay at the Ethlyn Hotel on the night of Sunday, October 14th, 1928. I did not see George Shallas, this defendant, at any time during the day of October 14th, 1928. I was in Spokane on the afternoon and night of [28] Saturday, October 13th. My wife was with

(Testimony of Theodore Sievers.)

me and we stayed at the Ethlyn Hotel, Sunday the 14th. I got up, I should judge between seven and eight. I went down before that—I sent to my sister's to get my car while my wife was getting dressed, and then I went up and got her grip and went down and went over to St. Luke's Hospital, and got my sister-in-law, Ruby Ohler, and drove around town for a while, and then went down to the Christian Science Church, which let out around about twelve o'clock, or a little after twelve, and then why, after that, we parked down town a little while, and ate our dinner, the three of us. Then we dropped Ruby off at her home. I did not see or talk to George Shallas at any time on Oct. 14th.

Q. Did you see him on the morning of October 15th? A. I did not.

Q. Did you pay him—

Mr. PAINE.—The 15th is not an issue in this case. He is confined here to testimony in regard to the 14th of October. I object on the ground that it isn't proper under the indictment.

The COURT.—It wouldn't be material under the charge.

Mr. PAINE.—No.

The COURT.—The charge is laid on the 14th. It is a question here whether or not what happened after the 14th would be material to any issue in this case.

Mr. PAINE.—That isn't charged in this indictment that it was false.

The COURT.—The charge is on the 14th.

Mr. PAINE.—That is all. He is confined to that.

Mr. LANGROISE.—This other evidence I thought it would be admissible as going to show that he did not see him at any time during that time.

The COURT.—The charge is that he didn't see him at any time on that date—the 14th.

Mr. LANGROISE.—That is true.

The COURT.—I think the objection is well taken. [29]

Mr. LANGROISE.—Very well.

The COURT.—As to what occurred after the 14th would not be material here.

I was in Tensed during the late afternoon and evening of Oct. 14th, 1928. My wife Laura Sievers and I remained at Tensed that night. I sold a pint of moonshine to Susanne Lawrence during the early part of that evening as charged in the information in Case No. 2828. I arrived at Tensed on Oct. 14th after I left Spokane between four-thirty and five-thirty, the best I can remember, and was there all the rest of that day and night until the next morning. I left Spokane around one o'clock, I should judge.

TESTIMONY OF N. D. WERNETTE, FOR
PLAINTIFF.

N. D. WERNETTE was called and sworn as a witness on behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I am an attorney of Coeur d'Alene, and represented Theodore Sievers in Case No. 2828. Either Mr. or Mrs. Sievers gave me a piece of paper purporting to be a receipt from the Ethlyn Hotel signed Geo. Shallas some time prior to the trial of Case No. 2828 and shortly after Sievers was arrested. I am unable now to locate it. It was never introduced in evidence at the trial of U. S. vs. Sievers.

TESTIMONY OF THEODORE SIEVERS, FOR
PLAINTIFF (RECALLED.)

THEODORE SIEVERS being recalled testified as follows: I never got the receipt back from Mr. Wernette, it was just a receipt to show that I had checked out on the 15th and the amount paid.

Mr. PAINE.—I object to that as incompetent, irrelevant and immaterial under the indictment.

The COURT.—Did this paper receipt cover any time you were at the hotel before the 15th?

A. Yes, it was supposed to have been for the 13th and 14th.

(Testimony of Theodore Sievers.)

The COURT.—Do you wish to cross-examine him before I [30] rule?

Mr. PAINE.—No.

The COURT.—Overruled.

Mr. PAINE.—Exception.

It was given to me by George Shallas several days before the trial and some time after the 15th of October. I did not pay the defendant at the Ethlyn Hotel the amount shown on the receipt.

Cross-examination.

(By Mr. PAINE.)

I am twenty-six years old, my wife's name is Laura Sievers. I have not yet been sentenced on the charges of selling liquor and perjury to which I plead guilty.

Q. Your wife and mother-in-law were bound over for perjury committed in this same transaction last fall?

Mr. LANGROISE.—That isn't true.

Mr. PAINE.—They were bound over on a charge placed against them before the United States Commissioner and released on \$500 bonds?

Mr. LANGROISE.—That is not material and is not a fact. The record would be the best evidence.

The COURT.—Yes, unless he knows.

Mr. PAINE.—It is a question of whether or not he knows.

A. When?

Q. Last January some time.

(Testimony of Theodore Sievers.)

A. They went over there for something. I suppose that is what they went over there for. That is what I thought.

Q. You thought that up until this term of court?

A. Yes.

Q. Isn't it a fact, Mr. Sievers, that your information was that if they would leave town and go back to Tensed that you would plead guilty to the liquor and perjury charges and charges would not be filed against your wife and mother-in-law? A. No.

Q. What is it?

A. I never had no understanding with nobody.

[31]

Q. But wasn't that the impression you had—isn't that the belief you had?

A. Yes. I don't know whether they went back to Tensed or not.

I was arrested on the liquor charge on the 21st or 22d of October, about a week or eight days afterwards. I went to see George Shallas about a week after this 21st of Oct., and about two weeks after the offense was committed. I saw Mr. Wernette in his office prior to that time, he stated that if I could get somebody that would be the best way to prove that I wasn't at home on that day. He told me to go out and prove that I wasn't at home on the 14th of October. At the preliminary hearing; I asked him what he was going to do, and he didn't know yet until after the preliminary. After the preliminary he asked me where we had stayed. I told

(Testimony of Theodore Sievers.)

him I was at Spokane on the 14th, and that I never come home until late on the 14th, and then, why, he says, "Do you think anybody saw you?" I said, "Nobody that I know of." He said, "That would be your best defence." To prove that I weren't home on that certain day. Then I went up to Spokane and seen George Shallas and explained the case to him and he said, "Well, I suppose we can fix it up some way." It is not a fact that I told him that I was there on Saturday and Sunday, the 13th and 14th and asked him to come and testify to that. I didn't see him on the 14th, maybe he seen me. I was not at the hotel when I went back from lunch before I went to Tensed. I dropped my sister-in-law off down the street and to the best of my knowledge I didn't stop at the Ethlyn Hotel. I was in the Ethlyn Hotel in the morning of Oct. 14th and I told Shallas that and wanted him to go on the witness-stand and testify to that. I went to my attorney in Spokane, Mr. Mack. I did not ask him to come here and testify, I just asked him if he saw me and my wife at the Christian Science Church on Sunday, Oct. 14th, and he said he would testify I was there at noon, but he couldn't testify to any longer. I first saw the hotel register [32] in George Shallas' room about two weeks after this liquor deal, and George gave it to me to bring up to Mr. Wernette. I had it in possession for several hours and brought it up and gave it to Mr. Wernette.

"Q. How long did you have it in your possession?"

(Testimony of Theodore Sievers.)

A. I think only so long as it takes to go from Spokane up here.

Q. Several hours? A. Yes.

Q. You brought it up and showed it to Mr. Wer-
nette? A. I did.

Q. And later it was introduced in evidence here?

A. Yes.

Q. Did you ever have it in your possession again?

A. No.”

The transaction with Suzanna Lawrence occurred around dusk. Tensed is in the neighborhood of sixty miles from Spokane. We made the trip from Spokane to Tensed by automobile, and stopped on our way at my brother's place at Spangle.

“Q. Did I understand you to say that you didn't leave Spokane until about one o'clock?

A. Something like that.

Q. You think you arrived at Tensed about four-
thirty or five? A. Yes.

Q. You went by automobile? A. Yes.

Q. You made the trip by automobile?

A. Yes.”

Redirect Examination.

(By Mr. LANGROISE.)

At the time I first talked with the defendant, George Shallas, relative to his testifying as to my being there during that time, I told him where I was on the evening of Oct. 14th and that I made the sale with which I was charged. I didn't see him or talk to him on the morning of Oct. 14th.

TESTIMONY OF W. A. SHAW, FOR PLAINTIFF.

W. A. SHAW was called and sworn as a witness in behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I reside at Tensed. I have lived there about six years, before that I lived at Davenport. I was at Tensed during Oct. 14th, 1928. On the afternoon of that date I was visiting at W. H. McNeil's at Tensed. The occasion was a kind of "Farewell Reception" given to a bunch of his Davenport friends. He was leaving Tensed and going back to Davenport. I saw Theodore Sievers in Tensed during the afternoon of Oct. 14th, 1928. I saw him drive up in a car in front of his residence. It was a Maxwell Coupe, his wife was with him. They got out of the car, went in the house, and he come back out and got some packages. I do not know whether they took out any before or not. He raised up the back part of the car, taken out some packages and went into the [33] house. He came back out—she didn't come back out." I passed the place where Theodore Sievers was living something around four o'clock and near five o'clock. I passed twice that afternoon. The Maxwell Coupe was there both times.

(Testimony of W. A. Shaw.)

Cross-examination.

(By Mr. PAINE.)

Q. How do you know it was four or five o'clock?

A. That is my best recollection. I know it was about five o'clock because I was getting my family ready to go home about five o'clock. I had fellows working for me and I was going home to get the horses lined up for the next day.

“Q. It wasn't right on the dot, five?”

A. I wouldn't say right on the dot.

Q. It was around five o'clock? A. Yes.

Q. By that it might have been fifteen or twenty minutes either way?

A. It wouldn't have been that much. It might be five or ten minutes.

Q. And that was Sunday afternoon, the 14th of October? A. Yes.

Q. That one time you are real positive about the time?

A. I am about as near positive about the time that time and more so than any other time I have spoken about.

Q. You didn't talk to Mr. Sievers? A. No, sir.

Q. Or Mrs. Sievers? A. No.”

TESTIMONY OF W. A. WEISS, FOR PLAINTIFF.

W. A. WEISS was called and sworn as a witness in behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I live about a mile and a half from Tensed. I am a farmer. I was in Tensed Oct. 14, 1928. I was at Mr. McNeil's for a farewell dinner he was giving there as he was closing up his business and leaving. It was Sunday. I know Mr. and Mrs. Sievers when I see them. I saw them around in front of their home in Tensed, Idaho, during the afternoon of Oct 14th, 1928. I seen them around their car three or four times that afternoon, in fact, Ted was working on the car, and he was in and out of the house and around the car practically all afternoon.

“Q. Did you see them more than once that day?

A. Yes, I seen them there around that car, probably three or four times that afternoon. In fact Ted was working on the car, and he was in and out of the house and around the car practically all afternoon.

Q. Did you have occasion to go by the house where he was living during the evening of October 14th, 1928?

A. No, I never went directly past the house.

(Testimony of W. A. Weiss.)

Q. Did you go close enough to it to see the front of it? A. Yes.

Q. Do you know what kind of a car Sievers was driving at that time? A. (No answer.)

Q. Open or closed?

A. It was, if I am not mistaken, it was a coupe.

Q. State whether or not you say any car standing in front of that place that afternoon?

A. Yes.

Q. What time was that?

A. Why I would say it was between half-past six and seven o'clock that evening. It was still there when I left for home." [34]

TESTIMONY OF W. H. PHILLIPS, FOR PLAINTIFF.

W. H. PHILLIPS was called and sworn as a witness in behalf of the plaintiff and testified as follows: [35]

Direct Examination.

(By Mr. LANGROISE.)

I am a farmer, laborer and logger. I live at Tensed. I was in Tensed a short time in the afternoon of October 14, 1928. I had dinner at Mr. McNeil's.

“Q. What was the occasion of your being there on that day?

A. I went down town after a paper along about noon or a little after.

(Testimony of W. H. Phillips.)

Q. Where did you eat dinner on the 14th?

A. At Mr. McNeil's.

Q. What was the occasion of your having dinner there?

Mr. PAINE.—We admit it was a farewell dinner.

Mr. LANGROISE.—Will you, and that it was the afternoon of October 14th, 1928?

Q. Do you know Mr. Sievers when you see him?

A. Yes.

Q. Did you see him the afternoon of October 14th, 1928, at Tensed, Idaho? A. Yes.

Q. Did you see his wife? A. Yes.

Q. Did you see his car in front of his place?

A. Yes.

Q. (The COURT.)—What time in the afternoon was this?

A. Well, I couldn't say exactly—along about one or one-thirty, somewhere along there. I don't know exactly, right around there somewhere."

Cross-examination.

(By Mr. PAINE.)

Q. You say you saw this car of Seivers there between one and one-thirty that afternoon?

A. Somewhere along about there.

Q. Not much later than half-past? A. No, sir.

Q. Probably nearer one o'clock?

A. Somewhere's around there.

(Testimony of W. H. Phillips.)

Redirect Examination.

(By Mr. LANGROISE.)

I saw them when I went there, there were two servings of dinner. I was a little late. McNeil called me in, some of the men had finished when I arrived and I had the second serving.

TESTIMONY OF W. H. McNEIL, FOR
PLAINTIFF.

W. H. McNEIL was called and sworn as a witness in behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I reside at Davenport, Wash. I lived in Tensed, Idaho, the early part of October 1928. I was in business there. I left there around the 17th or 18th. I was at my place at Tensed the Sunday before I left to go to Davenport. We gave a dinner to some of our friends. Mr. W. H. Shaw, Mr. Phillips and Mr. Weiss were there. I know Mr. and Mrs. Sievers when I see them, they were driving a Maxwell Coupe about that time. I saw him during the afternoon of Oct. 14th, 1928, at Tensed, Idaho. They drove up in front of their house and got out. His wife went into the house and after he got out of the car, he went around and raised up the hamper and got [36] some parcels out and went into the house.

“Did you see the car go away from there?”

(Testimony of W. H. McNeil.)

A. I didn't notice it being taken away from there after that.

Q. At any time that evening? A. No, sir."

Cross-examination.

(By Mr. PAINE.)

I couldn't say when I first saw the car there. We had dinner about one o'clock. I and the boys had eaten dinner and gone outside. We were out in front, probably one-thirty or two o'clock, and they drove up while we were out in front talking. I don't know how long after lunch it was, I didn't look at the clock. This was first called to my attention after Oct. 14th, not long ago. I got information, I would be subpoenaed as a witness about three weeks ago. Mr. Shaw mentioned it to me a little while before that, and that is the first time the matter was called to my attention since Oct. 14th.

TESTIMONY OF P. J. HART, FOR
PLAINTIFF.

P. J. HART was called and sworn as a witness in behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. LANGROISE.)

I am a Special Officer of U. S. Indian Service and reside at Plummer, Idaho. I was at Tensed on Oct. 14th, 1928. I saw Theodore Sievers there

(Testimony of P. J. Hart.)

that afternoon, I saw his car, a Maxwell Coupe. His car was in front of his place in the evening of Oct. 14th, I saw it several times.

“Q. Did you have occasion to go through Tensed during the evening of October 14th? A. I did.

Q. State to the jury whether or not his car was still in front of his place at the time? A. It was.

Q. Did you have occasion to go through Tensed again, after that? A. I did.

Q. When? A. Several times that evening.

Q. It was there? A. Yes.

Q. Did you have occasion to go by there during the early morning of the 14th? A. I did.

Q. What time? A. I should judge—

Q. The 15th I mean? A. Six o'clock.

Q. State to the Court and jury whether or not—

Mr. PAINE.—Now, I object to this testimony—

Mr. LANGROISE.—It is a circumstance showing whether or not the car was there the evening of October 14th, by showing it was still there at six o'clock the morning of the 15th. We want to show that in the early morning, around six o'clock, the car was still there.

Mr. PAINE.—I object, your Honor, that it is outside the issues here to show where this man Sievers was on the 15th. The Government has given us no warning that it was going to try—

The COURT.—Yes. I have ruled on that. Sustained.

Mr. LANGROISE.—The Government rests.”

(Testimony of M. E. Mack.)

Mr. PAINE.—At this time I have a motion I would like to make in the absence of the jury.

The COURT.—Gentlemen of the Jury, you will remember the admonitions I have given you. I will excuse you from the courtroom for a few minutes.

(Jury excused.)

Mr. PAINE.—The Government having rested, at this time the defendant moves the Court to direct the jury to return a [38] verdict of not guilty upon this indictment on the ground that there is no sufficient corroboration.

The COURT.—(After argument.) After taking into consideration all the circumstances, I think there is sufficient corroboration, and I will have to deny the motion and let the case go to the jury. There is enough here to let the case go to the jury.

Mr. PAINE.—May I have an exception?

The COURT.—Yes.

WHEREUPON, after an opening statement by counsel for the defendant the following proceedings were had:

TESTIMONY OF M. E. MACK, FOR
DEFENDANT.

M. E. MACK, a witness called on behalf of the defendant, was sworn and testified as follows:

Direct Examination.

(By Mr. PAINE.)

I am an attorney practicing in Spokane, Wash.

(Testimony of M. E. Mack.)

I am an officer of the Christian Science Church at Spokane. I know Mr. and Mrs. Sievers very well and Mrs. Sievers' sister, Ruby Ohler. I saw Mr. and Mrs. Sievers and Miss Ohler at the Christian Science Church in Spokane, Wash., on Oct. 14th, 1928, at five or ten minutes after twelve, noon.

TESTIMONY OF RUBY OHLER, FOR
DEFENDANT.

RUBY OHLER, a witness called on behalf of the defendant, was sworn and testified as follows:

Direct Examination.

(By Mr. PAINE.)

I reside at St. Luke's Hospital, Spokane, Wash. I am in training there as a nurse. I am a sister of Mrs. Theodore Sievers. On Oct. 14th, 1928, I left the hospital about eight-thirty A. M. and went down and met my sister's husband in front of the hotel, and I got in the car and rode around until church time, and my sister and I went to church at the Christian Science Church, where we saw Mr. Mack. Church was out a quarter or [39] twenty minutes after twelve. I met my brother-in-law and we drove out east to Dishman. They stopped at a fruit-stand and bought apples and so forth, and drove back to town, and stopped at Sullivan's Cafeteria and ate lunch, and it was a little after one then, then we went to eat and after we came out I didn't get into the car. I left them about one-thirty.

(Testimony of N. D. Wernette.)

It might have been a little later because my sister met an old school chum in Sullivan's Cafeteria and had quite a chat with her. It might have been a quarter to two.

TESTIMONY OF N. D. WERNETTE, FOR
DEFENDANT.

N. D. WERNETTE, a witness called on behalf of the defendant, was sworn and testified as follows:

Direct Examination.

(By Mr. PAINE.)

It is not a fact that Ted. Sievers came to me before the trial of his liquor case in November and informed me that he had been in Tensed at the time of the alleged offense and that he didn't think anyone saw him, and that I suggested it would be his best defense to get some witnesses. He did not tell me before the trial of his case that he had sold the liquor in question and that he was in Tensed that afternoon. He told me that he was at a different place and had witnesses to prove that he wasn't there at that time. I told him if he had such witnesses to go get them.

TESTIMONY OF W. D. McREYNOLDS, FOR
DEFENDANT.

W. D. McREYNOLDS, a witness called on behalf of the defendant, was sworn and testified as follows:

Direct Examination.

(By Mr. PAINE.)

I keep the records of the United States Commissioners in this district. Defendant's Exhibit No. 4 is a report of the United States Commissioner from the official files of this court. (Exhibit No. 4, being report of the Commissioner binding Mrs. Laura Sievers and Hattie Ohler over to the Grand Jury on a charge [40] of perjury, admitted in evidence.)

I have examined the returns of the Grand Jury at this session and no indictments were returned against Mrs. Laura Sievers or Hattie Ohler.

TESTIMONY OF GEORGE SHALLAS, FOR
DEFENDANT.

GEORGE SHALLAS, the defendant in the above-entitled cause, after having been first duly sworn on oath, testified as follows:

Direct Examination.

(By Mr. PAINE.)

I am the defendant in this action. I am a merchant and proprietor of the Ethlyn Hotel, Spokane, Wash. I have been running it about two years.

(Testimony of George Shallas.)

I testified in the case of the United States vs. Ted. Sievers at Coeur d'Alene Nov. 28th, 1928. I did see Mr. Sievers at my hotel on Oct. 14th, 1928, in the morning after breakfast, it might have been nine o'clock, it might have been later on, it might have been sooner. I saw him again after lunch, I don't know the exact hour. I didn't take notes, I seen they went to the room. Mr. Sievers came to the hotel some ten days or two weeks later and talked to me in regard to his having been there on Oct. 14h: He come up with wife—they tell me that if I remember last time up at the hotel, and I told him I did. I do not remember the date, but they told me, you know, charged with selling liquor to some Indian woman down near Tensed. So he told me if I would give him—he told me if I could give him the register sheet he could take it over to Coeur d'Alene to the attorney, and I told him he could have it. They wanted to know if I would come to testify for them in regard to it. I gave them Plaintiff's Exhibit No. 3 at that time. He took it with him. I seen it next when I came here to court in November. It was shown to me then. I identified the signature of Mrs Sievers, the erasure was not called to my attention at that time. I did not testify in regard to the fact that room 36 was re-rented on [41] Sunday the 15th of October, I did not make any change on the line, third from the bottom, on the back side of Exhibit No. 3 where it shows A. J. Logie registered from Seattle, room 36. I did not erase one figure out and write in

(Testimony of George Shallas.)

another. Mr. Sievers told me he was in Spokane. He arranged to have that room Sunday night, I did not know whether they slept in the room. There was no conversation about making an alibi. He did not ask me to change the register, he asked me to give it to him to take to his attorney. He came back some time later and asked for a receipt, that he paid for the room. I gave him sort of a receipt and I have never seen it since.

Cross-examination.

(By Mr. LANGROISE.)

Sam Sallinas operates the Ethlyn Hotel with me. Steve Pollis and Jim Pattis were working there for me in October, 1928. The receipt I gave Mr. Sievers showed he paid the rent, I don't remember it showed any days, it showed one or two nights. I do not remember about that receipt at all. I remember him getting the receipt. I remember that I testified that he occupied those rooms for the 13th and 14th and didn't go out until the 15th. I testified that he didn't check out until the morning of the 15th, that he paid me. Mrs. Sievers paid me one night's room when she came there Saturday night, Mr. Sievers paid some more, I don't remember if it was on the morning of the 15th. The room was paid in advance as I recall. I saw him the morning of the 15th. When I was on the witness-stand at the last trial, I testified, Q. "Who, if anybody did the checking out, who did they pay there? A. Personally to me. Q. Mr. Sievers did?"

(Testimony of George Shallas.)

A. Yes." Yes, Sievers paid the money when he checked out. I testified he checked out on Monday morning the 15th. There is no chance about my being mistaken about seeing them a couple of times on Oct. 14th. I testified definitely that I saw him twice between three and five o'clock, and as best I can recall, I did. I did not say [42] as best I can recall before.

"Q. You were asked on cross-examination whether or not—you were asked a number of times about it and finally you were asked "Any chance about your being mistaken? A. No, sir."

Mr. PAINE.—Where is that?

Mr. LANGROISE.—Page five.

Q. You didn't—no change of your being mistaken about seeing them there that evening? (Witness shown copy of testimony.)

A. I seen a copy of this before.

Q. Did you? A. That evening.

Q. The 14th—I am talking about the 14th.

The COURT.—Let him read the testimony.

(Witness reads record.)

"Q. No chance of your being mistaken about your seeing them a couple of times on October 14th?

A. Yes.

Q. You testified did you not definitely that you saw him twice between three and five o'clock.

A. Yes.

Q. Did you, if you know?

A. As best I can recall.

(Testimony of George Shallas.)

Q. You didn't say as best you could recall—you said specifically between three and five in the afternoon of October 14th, didn't you? A. Yes.

Q. You didn't say as best you could recall at that time, did you?

Mr. PAINE.—The record is the best evidence of what he said.

Mr. LANGROISE.—I am asking him if he knows.

A. I do not remember what I said on my last testimony.

Q. Run through your testimony—I will give you time.

A. I said between three and five—probably I didn't put any limit on time.

Q. Did you say to the best of your recollection anywhere in there? A. No, sir.

Q. You were positive about it?

A. It might have been a little after three.

Q. You saw him twice between three and five?

A. He went back to the room—Sievers went out and come back again and they went out.

Q. You saw him the morning of October 14th?

A. Yes." [43]

I said between three and five. I didn't say to the best of my recollection. It might have been a little after three. Sievers went back to the room, he went out and come back again and they went out. I am an early riser and I saw Sievers on the morning of the 14th. I am always on duty at seven o'clock, I get up all the time at seven o'clock. I have no other business besides operating the Ethlyn

(Testimony of George Shallas.)

Hotel. I have been in Spokane the last twenty years, in business there the last ten years, different businesses, running a pool-hall and a fruit store, the pool-hall was eight or nine years ago, I don't operate it now, I was in the fruit business about eight or nine years ago, also the hotel business.

Q. Mr. Shallas, when Mr. Sievers came to see you and told you that he was in trouble for the sale of liquor down at Tensed that afternoon of October 14th, 1928, he at that time explained to you and told you that he wanted a period for an alibi of two nights and three days at your place—one day before and one day after the sale, and you asked him, did you not, well, did anyone see you when you got down there? A. I did not.

Q. And you asked him whether the officers picked him up that night, or did they wait? A. No, sir.

Q. You asked him different questions about the likelihood of your getting in trouble if you came up here and testified to that? A. No, sir.

Q. You said, "All right, we will fix it up?"

A. No, sir, I never had no conversation about that at all.

Q. I will ask you whether or not you got the hotel register while you were talking to him?

A. He asked for it and I gave it to him.

Q. And when you got the hotel register and looked at it, where he registered for room 36, and then you got down here and found that room 36 was again rented out for the 14th, so for you say that they were there on the 13th and 14th and checked

(Testimony of George Shallas.)

out the morning of the 15th, you couldn't have room 36 rented to anyone else until the 15th, and it was then that you changed it [44] and made that erasure? A. I did not.

I don't know Mrs. Sievers signature. I did not see her register. I was sitting in the lobby. At the time she registered she paid for one night. she didn't say only one night she wanted a room—just got the room and didn't say nothing.

Q. You testified, did you not, at the last trial on direct examination by Mr. Wernette: "Q. Do you remember *there* checking out *there* Monday? A. The 15th, yes." I will read just before that: "Q. Did they stay at the hotel Sunday night?" And you answered "They did."

A. I didn't see them.

Q. But you answered that way there? A. Yes.

Q. Did they stay there Sunday night?

A. They had a room occupied—I do not know whether they slept there or not.

Mr. PAINE.—That is argumentative. He has already admitted that he testified to that.

Mr. LANGROISE.—I am going to find out what is right.

The COURT.—You asked him did he testify to that.

Mr. PAINE.—And he has already testified to that."

Q. At the time of the last trial against Theodore Sievers, held on November 28, Plaintiff's Exhibit

(Testimony of George Shallas.)

Number Three, which was then Defendant's Exhibit Number Two, was identified by you, was it not, and offered in evidence?

A. Yes. When I came down here and testified on Nov. 28th, 1928, I knew what Sievers was charged with.

Q. You knew he was charged with the possession and sale of whiskey at Tensed, Idaho, during the late afternoon?

A. I didn't know—I knew it was a liquor case.

Q. You knew what was supposed to have happened? A. I didn't get that.

Q. You knew when the sale was supposed to have occurred?

A. Yes, he told me he sold some liquor down at Tensed some place.

Q. How was that?

A. Charged with some liquor down near around Tensed.

Q. When? A. In October some time.

Q. When did the defendant tell you when he was charged with the sale of liquor?

A. Two weeks afterwards.

Q. Did he tell you the date he was supposed to have sold it?

A. He said he was charged with it the day he was at the hotel.

Q. What day?

A. The 14th of October, 1928.

Q. When you came down here you knew he was

(Testimony of George Shallas.)

charged with the sale of liquor on the 14th day of October at Tensed, Idaho, didn't you? A. Yes.

Q. And you knew at that time that you testified that they were at the hotel on the 13th, 14th [45] and 15th of October, 1928?

A. I seen them in the afternoon of the 14th. I didn't see them in the evening at all.

I testified I saw him on the 15th, checked out with me personally, I testified I saw him on the 13th and saw him register in.

Redirect Examination.

(By Mr. PAINE.)

My best recollection is that they didn't check out till the 15th. My best recollection is they stayed there on the 13th, 14th and 15th and that I saw them there Sunday afternoon or Monday.

The COURT.—Both sides rest?

Mr. LANGROISE.—Yes.

Mr. PAINE.—Yes.

Mr. PAINE.—At the close of all the testimony in the case, the defendant renews its motion for a directed verdict in his favor. I do not think this case should be submitted to the jury.

The COURT.—I think there is evidence here sufficient for the jury to pass on. The motion will be denied.

Mr. PAINE.—Exception.

The defendant presented to the Court the following instructions with the request they be given the jury:

No. I.

You are instructed that a statement purposely made cannot be said to have been corruptly made if made by or through mistake or inadvertence so that the defendant believed in good faith that the facts he testified to were in fact true, although actually false.

No. II.

You are instructed that the defendant is charged with falsely testifying in a criminal proceeding in this court in [46] substance and effect that he saw one Theodore Sievers at the Ethlyn Hotel at Spokane, Washington, on the 14th day of October, 1928. The Government has alleged that such testimony was false and that the said George Shallas did not see the said Theodore Sievers in Spokane, Washington, during the afternoon and evening of October 14th, 1928, or at any other time on that date.

I instruct you that the burden of proof is on the Government to prove the alleged false statement beyond a reasonable doubt. You cannot find the defendant guilty unless you believe beyond a reasonable doubt that the defendant, George Shallas, never saw the said Theodore Sievers in Spokane, Washington, on October 14, 1928.

No. III.

You are instructed that if this defendant, George Shallas, saw the witness Theodore Sievers in Spokane, Washington, on October 14, 1928, in the afternoon of said date, and honestly believed the time to have been at or near three o'clock of said day, then

the fact that the actual time he saw Sievers was somewhat earlier than three o'clock would not be material, and you cannot find the defendant guilty as charged.

WHEREUPON, after argument to the jury by counsel on both sides, the following instructions were given by the Court:

INSTRUCTIONS OF COURT TO JURY.

Gentlemen: I shall have to ask your patience for a few minutes while I present to you the principles of law applicable to this case. The defendant has entered a plea of not guilty to the charge set forth in this indictment. That means that he denies the charge therein set forth, and he is presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proof is upon the Government to show that he is guilty by that degree of proof. I have referred to the term reasonable doubt. A reasonable doubt is such a doubt as the term implies—a doubt for [47] which you can give a reason. It is not a speculative or conjectural doubt. It is a doubt which is created by the want of evidence, or may be created by the evidence itself. It is such a doubt as would cause a man of ordinary prudence, sensibility and understanding in determining an issue of like concern to himself as that before the jury to the defendant, to pause or hesitate in arriving at his conclusion. A juror is satisfied beyond a reasonable doubt when he is con-

vinced of the truthfulness of the charge to a moral certainty. So in this case if, after you have fairly considered all the evidence, you can conscientiously say to yourself that you are fully convinced, that is, that you have such an abiding conviction of guilt as you would be willing to act upon in the most important affair of your own lives, in that case you would not have a reasonable doubt and it would be your duty to convict. Upon the other hand, if after such consideration, you cannot candidly say that you have such abiding conviction of guilt, then you would have a reasonable doubt and it would be your duty to acquit.

As you have been told the Grand Jury in this district has presented to this Court the indictment against the defendant George Shallas, charging him with having committed the crime of perjury as set forth in the indictment which has been called to your attention. The issue really before you arises in this way: There is a statute of the United States which prohibits the having possession of intoxicating liquor, or selling intoxicating liquor. Heretofore a charge was brought against Theodore Sievers in this court, setting forth, in substance, that he did on or about October 14, 1928, at Tensed, Idaho, unlawfully have in his possession intoxicating liquor, namely, one pint of moonshine whiskey, and at the same time and place he did unlawfully sell intoxicating liquor, namely, one pint of moonshine whiskey. Thereafter Mr. Sievers plead not guilty to that charge, or charges,

and the matter came on for trial in an ordinary way, such as we are trying this case [48] before you, and it is alleged in the present indictment that Mr. Shallas was sworn as a witness in the Sievers case, and being sworn, gave testimony. The testimony that he is alleged to have given at that time and is now alleged to have been false and perjured is the testimony which is specifically set forth in the form of questions and answers in this indictment. It is charged in this case that in giving that particular item of testimony the defendant committed perjury, and perjury is defined by the statutes of the United States as a criminal offense, as it is there provided that "Every person who having taken an oath before a competent tribunal, officer or person or in any state in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify *truly*, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath take or subscribe any material matter which he does not believe to be true, is guilty of perjury."

You will note that to commit perjury the testimony must be given in a case or a trial of which the court has jurisdiction, and after an oath is administered to the witness giving the testimony, and such testimony must relate to a material matter, a material issue. I charge you specifically that this court, where it is alleged that such testimony was given, had jurisdiction of the charge set forth in the information in that case, and which was being tried.

I further charge you that the material issue in this case is whether or not Theodore Sievers had in his possession intoxicating liquor or sold intoxicating liquor. If you find from the evidence that the defendant George Shallas testified in the case of United States vs. Theodore Sievers that he saw Theodore Sievers at the Ethlyn Hotel in Spokane, Washington, on the afternoon of October 14th, 1928, between three and five o'clock, [49] you are instructed that such testimony was upon a material matter therein. I will further state to you that in the trial of that case, United States *versus* Theodore Sievers, referred to in this indictment, it was, as alleged in the indictment, material to know whether or not Theodore Sievers was in Tensed, Idaho, on the afternoon and evening of October 14th, 1928, and testimony in said trial relevant to that matter was material therein.

As I have already stated to you, in order to commit perjury the testimony must be given under oath. The Government here has presented the Clerk of the court, Mr. McReynolds, who testified before you this morning. I charge you as a matter of law that he has authority to administer oaths in this court. I cannot charge you as a matter of fact that he did administer the oath to Mr. Shallas before he, Mr. Shallas, gave the testimony claimed to be perjured, but you have heard the Clerk testify. He testified that he did so administer the oath, and if you believe his testimony beyond a reasonable doubt that would dispose of that issue.

The next question is as to whether or not the defendant George Shallas when he was testifying in that case, gave the testimony that he is now charged with having given, and in that regard you are concerned with whether or not when Shallas was testifying before in that case he testified substantially as set forth in the indictment.

The indictment charges, among other things, that the defendant Shallas, having been duly sworn as a witness in this court in the case of *United States versus Theodore Sievers*, then on trial herein, on November 28, 1928, wilfully, unlawfully, corruptly, falsely and feloniously swore in substance, in the language set forth in the indictment, that he, Shallas, saw Theodore Sievers, the defendant, then on trial, at the Ethlyn Hotel, in Spokane, Washington, on Sunday, October 14th, 1928, at [50] between nine and ten in the morning, and twice between three and five in the afternoon, and that he stayed at said hotel Sunday night, October 14th. The falsity is alleged to be in that Shallas knew that Sievers was not at the Ethlyn Hotel in Spokane, Washington, during the afternoon and evening of October 14th, 1928, between three and five o'clock, or at any other time on that date, and that Shallas did not see Sievers during the afternoon of October 14, 1928, in said hotel, or elsewhere in Spokane, Washington.

You are instructed that to find the defendant guilty it is not necessary that you find that he knowingly testified falsely in all the respects alleged, but

it is sufficient if you find that he knowingly falsely testified in any one of the respects alleged, that is, either that Sievers was not at said hotel in Spokane, Washington, between three and five o'clock on the afternoon or evening of October 14, 1928.

I will say to you further that if you believe that the defendant saw the witness Theodore Sievers in Spokane, Washington, on October 14th, 1928, in the afternoon of said date, and honestly believed the time to have been at or near three o'clock of said day, or between three and five o'clock in the afternoon, and that he was honestly mistaken as to the exact time, then as to that particular time he would be not guilty of perjury.

You are further instructed that a statement purposely made cannot be said to have been corruptly made if made by or through mistake or inadvertance so that the defendant believed in good faith that the facts he testified to were in fact true although actually false.

In determining whether or not he so testified you are to consider in this case the testimony given by all of the witnesses who have testified in regard to that matter. If you find from the testimony given by the Government witnesses that he did so testify at that trial as I have stated to you, then you have [51] the final issue, and that is, whether or not his testimony so given was true or false, and when I say true or false I mean something more than merely being mistaken. One cannot be charged, that is properly charged, with committing perjury

unless he wilfully, that is, knowingly testifies falsely—if he knowingly testifies to something he does not believe to be true—that is what is meant by perjury. Human memory is fallible, the human eye is fallible—we see things differently and remember things differently—so the law does not contemplate that a man should be punished for an honest mistake.

To this last issue, that is, whether or not in fact the defendant did testify falsely as charged in this indictment—on that issue you will consider all of the testimony which has been offered here. Many witnesses have testified on both sides of the proposition.

There is a further principle closely related to this which is peculiarly applicable to a perjury case of this kind. The jury is not warranted in convicting one who is charged with perjury upon the uncorroborated evidence or testimony of a single witness. That is due to the fact that generally speaking the testimony which is charged to be perjured has been given under oath, and it is not regarded as legally sufficient that another witness by his testimony challenge the testimony so given under oath. It is setting the testimony of one human being against another, and while one may be more credible than the other, the law provides that you cannot properly convict one upon the uncorroborated testimony of a single witness. There must be at least two witnesses or there must be the testimony of one witness corroborated by another witness of other facts and circumstances in evidence.

The issues of fact, as you know, are for you and you alone to decide, and that being true you become the sole judges [52] of the evidence, the credibility of the several witnesses who have testified, and the weight to be given to the testimony of each. In doing so you resort to your common sense. In your experience you have had in human affairs you have come to know what motive actuates witnesses in testifying before you, and you will follow those rules which you consciously or unconsciously have learned in your experience with your fellowmen.

Form of verdict has been prepared. Your verdict must be unanimous. You may retire with the bailiff. [53]

Mr. PAINE.—Before the jury retires I desire to present a few exceptions.

The COURT.—You may do so. The jury will just stay there at the door.

Mr. PAINE.—I except to the refusal of the Court to give defendant's instruction number two.

I also except to that portion of the instructions which begins with the word "To find the defendant guilty it is not necessary that you find that he knowingly testified falsely in all the respects alleged, but it is sufficient if you find that he knowingly falsely testified in any one of the respects alleged, that is, either Sievers was not at the hotel between three and five o'clock in the afternoon or evening of October 14th, 1928."

The COURT.—I will say to you again, Gentlemen, that when I referred to the testimony set forth in the indictment which was alleged to have been

given by the defendant at the trial of United States *versus* Theodore Sievers, that you are to understand that I was referring to the charge as to the testimony that was given in that case.

I think I said to you and I will say to you again that the falsity of that testimony—any part of it alleged in this indictment—is alleged to be in that Shallas knew that Sievers was not at the Ethlyn Hotel in Spokane, Washington, during the afternoon and evening of October 14th, 1928, between three and five o'clock of that afternoon, or any other time on that day, and that Shallas did not see Sievers during the afternoon of October 14, 1928, in said hotel, or elsewhere in Spokane, Washington. That is the charge of falsity made in this indictment. I say to you again that if you find—to find the defendant guilty it is not necessary that he knowingly testified falsely in all the respects charged, but it is sufficient if you [54] find that he knowingly *fl*asely testified in any one of the respects alleged, that is, either that Sievers was not at said hotel in Spokane, Washington, between three and five o'clock on the afternoon or evening of October 14, 1928. In other words, the falsity charged in this indictment is that Sievers was not at the hotel at between the hours of three and five on the afternoon of October 14, 1928, or the evening of October 14th, 1928.

Mr. PAINE.—May I have the same exception to the last?

The COURT.—Yes. [55]

CERTIFICATE OF JUDGE TO BILL OF EX-
CEPTIONS.

State of Idaho,
District of Idaho,—ss.

I, Charles C. Cavanah, United States District Judge for the District of Idaho, and the judge before whom the above-entitled action was tried, to wit: the cause entitled United States of America, Plaintiff, vs. George Shallas, Defendant, which is No. 2923 in said District Court.

DO HEREBY CERTIFY, that the matters and proceedings embodied in the foregoing bill of exceptions are matters and proceedings occurring in said cause and the same are hereby made a part of the record herein, and that the above and foregoing bill of exceptions contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record therein, and contains all of the evidence, oral and in writing therein, with the exception of Plaintiff's Exhibit No. 3, the original of which is hereby directed to be sent to the Circuit Court of Appeals ~~by the Clerk of this court and that the above and foregoing bill of exceptions was duly and regularly filed with the clerk of said court and regularly served within the time authorized by law and that no amendments were proposed to said bill of exceptions except such as are embodied therein, and that due and regular written notice of application to the court for settlement and certifying said bill~~

~~of exceptions was made and served upon the Plaintiff, which notice specified the place and time (not less than three days nor more than ten days after the service of said notice) to settle and certify said bill of exceptions dated—~~

Dated at Boise, Idaho, this 14th day of August, 1929.

CHARLES C. CAVANAH,
District Judge.

Exception allowed the Government to the order settling the bill of exceptions.

CHARLES C. CAVANAH,
Judge. [56]

[Endorsed]: Lodged August 5, 1929. Filed August 14, 1929. [57]

[Title of Court and Cause.]

MOTION TO STRIKE DEFENDANT'S PROPOSED BILL OF EXCEPTIONS.

Comes now the United States of America and makes the following motion to strike defendant's proposed bill of exceptions, upon the ground and for the reason that the said proposed bill of exceptions has not been filed or lodged within the time prescribed by Rule 76, of this court.

This motion is based upon all the records and files in the above-entitled case and upon the minutes of the Clerk of the United States District Court, for the District of Idaho, Northern Division, showing the adjournment of the May term of said court.

Dated this 12th day of August, A. D. 1929.

W. H. LANGROISE,

Attorney for Plaintiff United States of America.

The above motion is denied, and exception is allowed.

CHARLES E. CAVANAH,

Judge.

[Endorsed]: Filed August 12, 1929. [58]

At a stated term of the District Court of the United States for the District of Idaho, Northern Division, begun and held at the city of Coeur d' Alene, on June 4, 1929. Present: the Honorable CHARLES C. CAVANAH, Judge.

Among the proceedings had were the following, to wit:

CRIMINAL—No. 2923.

United States of America,

vs.

George Shallas,

Defendant.

MINUTES OF COURT—JUNE 4, 1929—TRIAL.

This cause came on for trial before the Court and a jury, W. H. Langroise, Assistant District Attorney appearing for the United States, and Messrs. Robertson and Paine appearing as counsel for the defendant, who was also present.

The Clerk, under directions of the Court, pro-

ceeded to draw from the jury-box the names of twelve persons, one at a time, written on separate slips of paper to secure a jury. O. E. Tallman, whose name was so drawn, was excused for cause; and Nick Lommell, whose name was also drawn, was excused on the plaintiff's peremptory challenge; and S. B. Roseboro, Harve Renfro, and Chas. W. Kellogg, and A. A. Campbell, whose names were likewise drawn, were excused on the defendant's peremptory challenge.

Following are the names of the persons whose names were drawn from the jury-box, who were sworn and examined on *voir dire*, found duly qualified, and who were sworn to well and truly try said cause and a true verdict render, to wit: C. E. Allison, O. J. Lynge, Marcus Anderson, Edw. E. Kyle, Sam B. Wood, Fulton Cook. O. F. Leonard, J. E. Smith, Dave Cleland, W. F. Breshears, C. K. Couchman and J. C. Proffitt.

The indictment was read to the jury by the Assistant District Attorney who informed them of the defendant's plea entered thereto, whereupon, W. D. McReynolds, Leo G. Hamilton, Theodore Sievers, W. H. Langroise, N. D. Wernette, W. A. Shaw, [59] W. A. Weeks, W. H. Phillips, W. H. McNeil and R. J. Hart were sworn and examined and other evidence was introduced on the part of the United States and here the plaintiff rests.

The defendant, through his counsel, at this time moves the Court to direct the jury to return a verdict of not guilty. After hearing argument of

counsel on the motion, the Court denied the same, allowing exceptions to the defendant.

M. E. Mack, Ruby Ohler and George Shallas were sworn and examined as witnesses on the part of the defendant and N. D. Wernette and W. D. McReynolds were recalled and further examined and here the defendant rests and both sides close.

The defendant's motion for a directed verdict was renewed by his counsel and was denied by the Court with exceptions allowed the defendant.

The cause was argued before the jury by counsel for the respective parties, after which the Court instructed the jury and placed them in charge of a bailiff duly sworn, and they retired to consider of their verdict. While the jury was still out, the Marshal was directed to provide them with dinner at the expense of the United States.

On the same day the jury returned into court, the defendant and his counsel being present, whereupon, the jury presented their written verdict, which was in the words following:

(Title of Court and Cause.)

VERDICT.

“We, the Jury in the above-entitled case, find the defendant George Shallas Guilty as charged in the indictment.

FULTON COOK,
Foreman.”

The verdict was recorded in the presence of the jury and then read to them and they each confirmed the same.

Four o'clock P. M. June 5, 1929, was fixed as time for judgment herein. [60]

United States of America,
District of Idaho,—ss.

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of record of trial held on June 4, 1929, in the case of United States of America vs. George Shallas, Defendant, No. 2923, Northern Division, Criminal has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Court in said District this 10th day of August, 1929.

[Seal]

W. D. McREYNOLDS,

Clerk.

M. Franklin,

Deputy. [61]

United States of America,
District of Idaho,—ss.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the May Term, 1929, of the United States District Court for the District of

Idaho, Northern Division, was adjourned without day on June 19, 1929.

IN TESTIMONY WHEREOF, I have set my hand and the seal of said Court in said District this 10th day of August, 1929.

[Seal]

W. D. McREYNOLDS.

W. D. McREYNOLDS,

Clerk. [62]

[Title of Court and Cause.]

AFFIDAVIT OF DENE HICKMAN.

State of Idaho,
County of Ada,—ss.

Dene Hickman being first duly sworn upon his oath deposes and says:

That he is a special agent of the Treasury Department and that he has been in the employ of the Government for approximately three years in connection with special investigations for the Treasury Department. That during the latter part of May and the early part of June of 1929, he was in the city of Coeur d'Alene, Idaho, in connection with the investigation of the case of the United States of America vs. George Shallas, together with other matters that he was then investigating.

That he saw Laura Seivers in the office of the District Attorney for the District of Idaho, at Coeur d'Alene, Idaho, during the latter part of May when she was advised that her case would

not be presented to this Grand Jury, and that she might go home if she desired. [64]

That he was present in the courtroom during the presentation of the evidence of the Government in the case of United States of America vs. George Shallas. That after all of the evidence in the Government's case had been presented and the Government rested and during the argument of the motion for a directed verdict in behalf of the defendant Shallas, that Laura Seivers entered the courtroom at Coeur d'Alene, Idaho; that she walked down the center aisle of the courtroom to the front row of seats.

That he then took Theodore Seivers and with Mr. Hart and Laura Seivers, went into the office of the United States Attorney where they talked with Laura Seivers. That all of the facts leading up to and including October 14th, 1928, as well as the 15th of October, 1928, were gone over at that time, with Laura Seivers, for the first time by the Government. Her statements were identical with those of Theodore Seivers, with the exception that she stated at that time that she thought that they had gone back to the Ethelyn Hotel after lunch so her husband, Theodore Seivers could get some articles for her that she had left in the room. Theodore Seivers, her husband, who was present during all of this conversation, together with Mr. Hart, special agent of the Indian Service, stated to her that she was mistaken, that the time that he had gone back for articles she had left in the room was on a previous occasion and that they did

not go back to the Ethelyn Hotel on October 14th, 1928, and at that time, Theodore Seivers detailed to his wife, Laura Seivers, the exact route they took when they left Spokane, Washington, on October 14th, 1928. After he had done this, Laura Seivers replied "You might be right, and it might have been an earlier time, but it is in my mind it was that day." Theodore Seivers then stated that she was absolutely mistaken, and that it was at another time, because this transaction was firmly fixed in his mind.

After having talked with Laura Seivers and Theodore Seivers in the presence of Mr. Hart, he (this affiant) went into the courtroom at which time the defense was putting on its testimony and told Mr. Langroise who was trying the case for the Government, that he had talked with Laura Seivers and Theodore Seivers, and that [65] their stories were identical, with the exception that Laura Seivers thought that they had returned to the Ethelyn Hotel on October 14th, 1928, to get some articles that she had left in the room, and he also told Mr. Langroise that Theodore Seivers had positively stated that she was mistaken, and that this had occurred on an earlier date, and that he then detailed to her the route that they had taken leaving Spokane, Washington, that day, and that they did not go near the Ethelyn Hotel, to which she had answered that he might be right, but that it was in her mind that they had returned.

After detailing this to Mr. Langroise, Mr. Langroise told him to release her and let her go home

as the Government's case was in, and that the Government could not use her anyway. He then returned to the United States Attorney's office, secured her witness card and had one of the members of the U. S. Attorney's office sign it for her release and took her into the U. S. Marshal's office for the payment of her fees, so that she might return home.

Laura Seivers was never asked by this affiant or by Mr. Hart the special officer, in affiant's presence, to testify to anything other than the facts she knew. That he never turned her over to the custody of the marshal or the custody of anybody.

Affiant further states that he is the same person referred to in the affidavit of Laura Seivers as Dave Hickman, Special Agent of the Department of Justice.

(Signed) DENE HICKMAN.

Subscribed and sworn to before me this 9th day of July, A. D. 1929.

[Seal]

W. D. McREYNOLDS,
Clerk U. S. District Court.

By F. M. Hughell,
Deputy.

[Endorsed]: Filed July 9, 1929. [66]

AMENDMENTS TO BILL OF EXCEPTIONS.

"A bill of exceptions to any ruling may be reduced to writing and settled and signed by the Judge at any time the ruling is made, or at any subsequent time during the trial, if the ruling was

made during the trial, or within such time as the Court or Judge may allow by order made at the time of the ruling, or if the ruling was during a trial by order made at any time during the trial, or within the time hereinafter mentioned, and when so signed shall be filed with the Clerk.

If not settled and signed as above provided, a bill of exceptions may be settled and signed as follows: The party desiring the bill shall within ten days after the ruling was made, or if such ruling was made during a trial within ten days after the rendition of the verdict, or, if the case was tried without a jury within ten days after written notice of the rendition of the decision, serve upon the adverse party a draft of the proposed bill of exceptions. The exception must be accompanied with a concise statement of so much of the evidence or other matter as is necessary to explain the exception and its relation to the case, and to show that the ruling tended to prejudice the rights of such party. Within ten days after such service the adverse party may serve upon the proposing party proposed amendments to the proposed bill. Such proposed bill and the proposed amendments shall within five days thereafter be delivered by the proposing party to the Clerk for the Judge. The Clerk must, as soon as practicable thereafter, deliver said proposed bill and amendments to the Judge, who must thereupon designate a time at which he will settle the bill; and the Clerk must, as soon as practicable, thereafter notify or inform both parties of the time so designated by the Judge.

In settling the bill the Judge must see that it conforms to the truth, and that it is in proper form, notwithstanding that it may have been agreed to by the parties, or that no amendments may have been proposed to it, and must strike out of it all irrelevant, unnecessary, redundant and scandalous matter. After the bill is settled, it must be engrossed by the party who proposed the bill, and the Judge must thereupon attach his certificate that the bill is a true bill of exceptions; and said bill must thereupon be filed with the Clerk."

Rule 76—Rules of Practice, of the U. S. District Court for the District of Idaho.

The foregoing proposed amendments are allowed as a part to the bill of exceptions, Aug. 14th, 1929.

CHARLES C. CAVANAH,

Judge. [67]

[Title of Court and Cause.]

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

George Shallas, defendant in the above-entitled cause, feeling aggrieved by the judgment and sentence rendered and entered in said cause on the 5th day of June, 1929, does hereby appeal from the said judgment and sentence to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by

law, and that a transcript of record, proceedings and papers upon which said judgment and sentence were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such court in such case made and provided.

ROBERTSON & PAINE,
Attorneys for Defendant.

ORDER.

IT IS HEREBY ORDERED that the appeal of George Shallas be and the same hereby is allowed and that said George Shallas be admitted to bail upon giving bond as required by law in the sum of \$4,000.

Dated this 5th day of June, 1929.

CHARLES C. CAVANAH,
U. S. District Judge.

[Endorsed]: Filed June 5, 1929. [68]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now the above-named defendant and herein files his assignments of error committed by the trial judge in the proceedings in the trial of the above-entitled cause, to wit:

I.

That the Court erred in denying defendant's motion for a directed verdict at the close of the

plaintiff's case because of the insufficiency of the testimony.

II.

That the Court erred in denying defendant's motion for a directed verdict at the close of all the testimony because of the insufficiency of the testimony.

III.

That the Court erred in refusing to give defendant's requested instruction No. 2, reading as follows:

“You are instructed that the defendant is charged with falsely testifying in a criminal proceeding in this court in substance and effect that he saw one Theodore Seivers at the Ethlyn Hotel in Spokane, Washington, on the 14th day of October, 1928. The Government has alleged that such testimony was false and that the said George Shallas did not see the said Theodore Seivers in Spokane, Washington, during the afternoon and evening of October 14, 1928, or at any other time on that date. I instruct you that the burden of proof is on the Government to prove the alleged false statement beyond a reasonable doubt. You cannot find the defendant guilty unless you believe beyond a reasonable doubt that the defendant George Shallas never saw the said Theodore Seivers in Spokane, Washington, on October 14, 1928.” [69]

IV.

The Court erred in instructing the jury that the

indictment charged that the defendant George Shallas wilfully, unlawfully, corruptly, falsely and feloniously swore that the witness Theodore Seivers stayed at the Ethlyn Hotel in Spokane, Washington, Sunday night, October 14, 1928.

V.

The Court erred in instructing the jury as follows:

“You are instructed that to find the defendant guilty it is not necessary that you find that he knowingly testified falsely in all the respects alleged, but it is sufficient if you find that he knowingly falsely testified in any one of the respects alleged, that is, either that Seivers was not at said hotel in Spokane, Washington, between three and five o'clock on the afternoon or evening of October 14, 1928, or that he, Seivers, was not there at any time on that day, or that Shallas did not see Seivers during the afternoon of that day at said hotel or elsewhere in Spokane.”

ROBERTSON & PAINE.

Attorneys for Defendant

[Endorsed]: Filed June 5, 1929. [70]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

To the United States of America:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the United States District Court for the District of Idaho, Northern Division, wherein the defendant in the above-entitled cause is appellant and you, as plaintiff in said cause, are appellee, to show cause, if any there be, why the judgment and sentence in said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable CHARLES C. CAVANAHA, United States District Judge, this 5th day of June, A. D. 1929.

CHARLES C. CAVANAHA,
U. S. District Judge.

Attest: W. D. McREYNOLDS,
Clerk.

Copy of the above citation received this 5th day of June, 1929.

W. H. LANGROISE,
Asst. U. S. District Attorney.

[Endorsed]: Filed June 5, 1929. [71]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, George Shallas, as principal, and the Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto the United States of America in the full and just sum of Four Thousand (\$4,000) Dollars, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns.

Sealed with our seals and dated this 5th day of June, 1929, A. D.

WHEREAS, lately at the May term, A. D. 1929, of the District Court of the United States, for the District of Idaho, Northern Division, in a suit pending in said court between the United States of America, plaintiff, and George Shallas, defendant, a judgment and sentence was rendered against the said George Shallas, and the said George Shallas has obtained an order allowing an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing said United States of America to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, at the city of San Francisco, State of California, thirty days from and after the date of the said citation, which said citation has been duly served;

Now, the conditions of the above obligation is such that if the said George Shallas shall appear, either in person or by [72] attorney, in the United States Circuit Court of Appeals, for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause in said court, and shall prosecute his said appeal and abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed or the appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the District of Idaho, Northern Division, at such day or days as may be appointed for retrial in said District Court, and abide by and obey all orders made by said court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

GEO. SHALLAS,

Principal.

FIDELITY & DEPOSIT COMPANY OF
MARYLAND.

By G. D. PERMAIN,

Atty.-in-fact.

[Seal]

ABE KALEY,

General Agent,

Surety.

Bond approved this 5th day of June, 1929.

CHARLES C. CAVANAH,
U. S. District Judge.

Approved as to form.

W. H. LANGROISE,
Asst. U. S. District Attorney.

[Endorsed]: Filed June 5, 1929. [73]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled *Matter*:

Please make up and certify to the Circuit Court of Appeals Ninth (9th) Judicial Circuit the following papers and records in the above-entitled cause:

1. Indictment.
2. Verdict.
3. Judgment and sentence.
4. Petition for a new trial.
5. Amended petition for a new trial.
6. Order denying new trial.
7. Petition for appeal and order allowing same.
8. Citation on appeal.
9. Assignment of errors.
10. Motion for order extending time to file bill of exceptions and affidavit.
11. Order extending time in which to serve and file bill of exceptions.
12. Bill of exceptions.

13. Bond on appeal.
14. Order extending time to file and docket case in the Ninth (9th) Circuit.
15. Order further extending time to file and docket the case at San Francisco.
16. Praecipe for transcript of record.

ROBERTSON & PAINE,
Attorneys for Defendant.

[Endorsed]: Filed Jul. 29, 1929. [74]

[Title of Court and Cause.]

**ADDITIONAL PRAECIPE FOR TRANSCRIPT
OF RECORD.**

To the Clerk of the Above-entitled Court:

Please make up and certify to the Circuit Court of Appeals for the Ninth Judicial Circuit, the following papers and records in the above-entitled case:

1. Motion of plaintiff to strike proposed bill of exceptions.
2. Objections of plaintiff to the settling and allowing of defendant's proposed bill of exceptions.
3. Minute entry of the trial of the case of United States vs. George Shallas being case #2923 Northern, showing the trial of said case.
4. Certificate of the Clerk showing the day on which the May term of court for the Northern Division 1929 was adjourned and whether or not it was adjourned without day.

5. All other records, orders and other papers in the above-entitled case having to do with the filing and preparing of the bill of exceptions.
6. The affidavit of Dene Hickman filed in opposition to the motion for new trial.
7. Rule 76 of the Rules of Practice of the United States District Court for the District of Idaho.

W. H. LANGROISE,
Attorney for Plaintiff, United States of America.

[Endorsed]: Filed August 14, 1929. [75]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe filed herein by the appellant and praecipe filed by the appellee for additional parts of the record.

I further certify that the cost of the record herein amounts to the sum of \$17.20, and that the same has been paid by the appellant.

WITNESS my hand and the seal of said court
this 15th day of August, 1929.

[Seal]

W. D. McREYNOLDS.

W. D. McREYNOLDS,

Clerk. [76]

[Endorsed]: No. 5918. United States Circuit
Court of Appeals for the Ninth Circuit. George
Shallas, Appellant, vs. United States of America,
Appellee. Transcript of Record. Upon Appeal
from the United States District Court for the Dis-
trict of Idaho, Northern Division.

Filed August 17, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

By Frank H. Schmid,

Deputy Clerk.